

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Maltreatment,
Disqualification, and Order of
Revocation of Deborah Barry

**FINDINGS OF FACT, CONCLUSIONS,
AND RECOMMENDATION**

A hearing in this matter was conducted by Administrative Law Judge Steve M. Mihalchick on August 11 and 12, 2004, at the Office of Administrative Hearings in Minneapolis. The hearing record closed at the end of the hearing on August 12, 2004.

Joseph A. Rheinberger, Attorney at Law, Historic Hamm Bldg., 408 St. Peter, Room 412, St. Paul, MN 55102, appeared for Deborah Barry (Licensee). Michael E. Burns, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2127, appeared for the Department of Human Services (the Department).

NOTICES

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

Whether Licensee physically and emotionally abused vulnerable adults in her care by kicking a vulnerable adult, telling a vulnerable adult she wished she would jump out of a window, by yelling at vulnerable adults, by making faces at a vulnerable adult, and by grabbing the wrist of a vulnerable adult.

The Administrative Law Judge finds that Licensee did engage in such acts.

Whether such conduct constitutes recurring maltreatment and disqualifies Licensee from direct contact with persons served by certain licensed and unlicensed programs.

The Administrative Law Judge concludes that the conduct does constitute recurring maltreatment, which requires Licensee's disqualification.

Whether Licensee poses a risk of harm to the vulnerable adults she wishes to serve so that her disqualification for recurring maltreatment should not be set aside under Minn. Stat. § 245A.04, subd. 3b(b).

The Administrative Law Judge finds that Licensee does pose a risk of harm to the persons to be served and concludes that her disqualification for recurring maltreatment should not be set aside.

Whether, under Minn. Stat. § 245A.07, the Department correctly ordered the revocation of Licensee's adult foster care license based upon findings that Licensee had committed recurring maltreatment.

The Administrative Law Judge concludes that the Department properly revoked Licensee's adult foster care license.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Licensee's Adult Foster Care Home

1. Licensee has owned her home in St. Paul for 27 years. She has been licensed to provide adult foster care there for 12 years. During that time, she has provided foster care for adult women, mostly elderly, all with developmental disabilities. She can care for three women at a time. Over the past 12 years, she has had about six long-term residents (also called clients) and about five short-term residents. Licensee received payments of about \$3,000 per month for providing foster care for three residents. It was her only income at the time.^[1]

2. Licensee lives on the first floor of her home. The residents live upstairs in private bedrooms and share a bathroom, kitchen, and "social activities" room. Licensee

prepares meals on the first floor and takes the food up to the clients to eat on the second floor. She prepares lunches for them to take to their weekday jobs at a work agency. Licensee requires the clients to clean their own rooms and one of the shared areas, but doesn't expect that to be very well done because of their limited abilities. She cleans the entire second floor every Monday.^[2]

3. In Licensee's words, she provides her residents a safe, healthy environment, good food, social activities at home and elsewhere, and transports them to activities and appointments, and takes them with her to visit friends.^[3]

4. To many people, Licensee had a record and reputation of providing excellent care, particularly in regard to the cleanliness of her home and how neat and well-dressed she kept the residents. Marilyn McCallum was Licensee's Adult Foster Care Licensur at Ramsey County for ten years until her retirement in May of 2004. She licensed about 70 adult foster care providers. She found that Licensee was an "excellent" provider of a home-like environment, that the clients seemed "very comfortable" with Licensee, that her home was very neat, that the food was particularly good, and that Licensee exhibited a lot more patience with the clients than most adult foster care providers. McCallum reported that Licensee can be "crass," but didn't find that to be a significant problem and felt Licensee provided an appropriate, family-style environment for the clients. She had no concerns about Licensee's care and recalls nothing negative about Licensee. The only exception to that was a complaint by a transportation provider that Licensee, who lives on a corner, required the van driver to pick up a resident by the driveway.^[4] That was because the curb was crumbling in front and Licensee was concerned for her client's safety.^[5]

5. McCallum and other licensors solicited annual evaluation forms from the social workers who placed clients in Licensee's home. Nine such reports submitted from 1993 to 2004 gave Licensee average to very high marks, with the highest marks in addressing the social and emotional needs of the clients. All the social workers in these evaluations stated they would use Licensee's home again for appropriate clients.^[6]

6. Claudia Heide is a Social Worker for Ramsey County and the Case Manager for A.S. and E.B., two of Licensee's residents, until July, 2002, when Heide took a different position with the County. She has known Licensee since 1996, when she placed E.B. there and has observed Licensee's home and conduct many times since. She found Licensee to have an "easy interaction" with the clients and that they were comfortable with her. She felt Licensee went above and beyond the normal requirements in providing care. Heide described Licensee as having a gruff voice and sometimes angry tone of voice and being "direct" and "honest" with the clients. Because A.S. has difficulty hearing and speaking, Licensee spoke more loudly to her, which Heide thought A.S. might interpret as anger. However, A.S. never complained about Licensee to Heide and seemed to Heide to be happy with Licensee. E.B. also seemed to Heide to be very happy and to like Licensee very much. Heide moved E.B. from Licensee's home in April 2002, because E.B. had very difficult problems with bowel control that required more supervision and staff than Licensee could or wanted to provide. E.B. did not want to move. Licensee also asked Heide to move A.S. because

of difficulties A.S. had navigating the stairs in Licensee's home and Heide started looking for another placement before July, 2002. Heide felt that Licensee was tiring of all the physical requirements of providing care for difficult clients. Heide was aware that there had been three previous reports of Licensee being emotionally or physically abusive toward residents, but when she looked into them, she did not believe they had occurred.^[7]

7. The clients received various services from other types of providers. They received transportation and in-home services from employees of Boston Health Care Systems, Inc., and training and employment services at various training centers. Licensee's relationship with the Boston Health Care staff became very strained when Licensee concluded that they had raised concerns about her care of the clients.

Client A.S.

8. A.S. was born January 7, 1950, is developmentally disabled and has mild mental retardation. She cannot read. She is deaf in one ear and has lost some hearing in the other. She wears hearing aids, but has some difficulty keeping them in and maintaining them. When her hearing aids are in, it is not necessary to yell at her for her to understand. She does not speak clearly. Everyone familiar with her, including Licensee, believes she is truthful, but can be confused. She often responds with, "I don't know," when she does not understand a question or when she does not want to answer. She has a deformed ankle and one leg shorter than the other. She walks with difficulty in a contorted posture, which can be painful for her. She falls frequently. She has difficulty with incontinence and cleanliness after toileting. She is friendly, but can become angry and aggressive. She has a cat she takes good care of. She has maintained various part-time employments.^[8]

9. A.S. is under guardianship of the Commissioner. She was placed at Licensee's home on March 30, 2000. At the time, Licensee did not feel she was a good fit there because of her difficulty with the stairs, but was reluctantly willing to accept her because it was difficult to find a place that would accept a resident with a cat.

10. The relationship between Licensee and A.S. started out fine, but over time deteriorated. At some point, Licensee no longer wanted A.S. to stay with her. Licensee felt some frustration with A.S. because she would not wash her hands after toileting. So she felt it best that A.S. be assigned to clean the bathroom instead of the kitchen. A.S. began to feel that Licensee was mean to her. Licensee yelled and "hollered" at her and the other residents and used "bad words" toward them. In particular, she used the word "shit" to describe the messes made by E.B. with her bowel problems. She called A.S. a "big ass." Licensee became short-tempered and angry with A.S. and the other residents.

11. Licensee made it clear to A.S. that she no longer wanted her there and made a comment to A.S. about making A.S. jump out the window in A.S.'s room. That comment was overheard by E.B., who resided with Licensee until April, 2002.

12. One night, A.S. was cleaning the bathtub and went to the kitchen to get a rag wet. She left the faucet running and dripped some water on the floor on her way back to the bathroom. Licensee got mad at A.S. about the faucet and the water on the floor. She told A.S. to get down on her hands and knees and wipe it up. A.S. got down as told and was wiping up the water. Licensee then pushed A.S. with her hands and then kicked A.S. on the lower, right side of her back. She then made A.S. go to bed. This incident was observed by E.B. from her room, although her view of the actual kick may have been blocked by Licensee's body. The kick hurt A.S. and she had a sore back from it for some period of time.

13. On another occasion Licensee grabbed A.S.'s arm and pulled it. While doing so, A.S.'s watchband came off. Licensee made faces at her, particularly while on the stairs, where A.S. had difficulty moving. At least once while trying to talk to A.S., Licensee grabbed A.S.'s chin to turn her face toward Licensee.

14. On another occasion, A.S. told the staff from Boston Health Care that Licensee was mean to her. A complaint was made and Licensee figured out that A.S. had complained to Boston Health Care about her treatment by Licensee. Licensee then pulled A.S. downstairs to her "office" and made her sit down and talk about it. She hollered at A.S., called her "big mouth," and told her she wished she could take A.S. to a high building and make her jump. A.S. was very afraid of Licensee and wary of Licensee's warnings not to complain about her.^[9]

15. Licensee became very bitter toward Boston Health Care, especially Boston Health Care employee Jennifer Janowski. On July 22, 2002, Janowski dropped A.S. off after an activity and Licensee refused to speak to her. On July 29, 2002, Janowski called about a client matter, and Licensee told her she was not allowed in the house and could only pick up and drop off the clients.^[10]

16. Janowski had worked with A.S. for several months and was close to her. On July 31, 2002, Janowski picked A.S. up from her work agency, Midwest Special Service, and took her to her doctor for a Mantoux Tuberculosis test for camp. She observed that A.S. appeared sad and not her normal happy self. She asked A.S. if she was happy and A.S. started crying. Janowski asked what was wrong, and A.S. said only, "Deb," but didn't want to say any more. Despite A.S.'s reluctance, they did talk. A.S. told her not to tell Licensee, but that Licensee was upset with her "big mouth." Janowski asked her what Licensee said or did, and A.S. said that Licensee had yelled at her, and made faces at her.^[11]

17. Janowski took A.S. to Dr. Gerber for the Mantoux test, then took her back to the Boston Health Care office and reported the conversation to her supervisor, Mary Kay Schmitt. They talked with A.S. some more and she told them that Licensee had threatened to throw her out a window and kicked her in the back while she was cleaning up spilled water. They made an appointment for A.S. to be seen the next day by Dr. Gerber again.^[12]

18. Jennifer Herman took over as A.S.'s case worker earlier in July, 2002. Herman had reviewed the file and seen Heide's notation that Licensee was unable to provide care any longer and Heide was looking for another placement for A.S. On July 31, 2002, Herman picked up A.S. from Boston Health Care and took her out to a movie. A.S. told Herman that she was not happy with Licensee and did not want to go home to Licensee. Herman then decided not to return A.S. to Licensee's home and took her to an emergency foster care home. She was subsequently placed elsewhere. A.S. reports that in her new home are "Nice people."^[13]

19. Janowski took A.S. back to Dr. Gerber on August 1, 2002. Erin King, a Certified Medical Assistant (CMA) in the office did the patient intake interview. Janowski gave her the basic facts, but King incorrectly assumed that Janowski was "Debbie" (the foster care provider) and put A.S. in a separate room so she could get A.S.'s version of what happened. A.S. told King that she had been kicked in the back by Licensee. She could not remember when it had happened. Dr. Gerber's notes show that A.S. repeated these same facts to the doctor.^[14]

Department Investigation

20. A report was filed with the Department alleging that Licensee had kicked A.S., had threatened to throw A.S. out of a second floor window, yells a lot, makes faces at A.S., had called A.S. a "big mouth," and had pulled and twisted A.S.'s wrist, breaking A.S.'s watch. The report was investigated under the Vulnerable Adult Act, Minn. Stat. §§ 626.557 - 626.5572, by Department Investigator Lisa Antony-Thomas.^[15]

21. Antony-Thomas started her investigation on August 8, 2002. She conducted several interviews and document reviews over the next month. Because A.S. was no longer in Licensee's home, the investigation was not given high priority. From October, 2002, to October, 2003, Antony-Thomas conducted additional interviews when she could and sent out regular "4 month letters". Antony-Thomas interviewed or at least spoke with Licensee, A.S., E.B., A.C., S.K., Jankowski, Schmidt, King (Dr. Gerber's CMA), Herman, Heide, McCallum, and A.C.'s conservator.^[16]

22. A.C. and S.K. were two other persons cared for by Licensee. A.C.'s conservator told Anthony-Thomas that A.C. was taken out of Licensee's care. A.C.'s conservator said that questions of inappropriate treatment of A.C. by Licensee were the reasons for the change.^[17]

23. Based upon Antony-Thomas' investigation, the Department issued an Investigative Memorandum on October 23, 2003, in which it found three allegations of abuse to be "substantiated."

Allegation 1: The Department found that Licensee had kicked and pushed A.S. while she was on the floor cleaning up a spill in the Spring of 2002, and that such conduct constituted maltreatment by physical abuse.

Allegation 2: The Department found that A.S. was aware that Licensee no longer wanted her living there and that Licensee had told A.S. that she wished A.S. would jump out of a second story window of Licensee's home or that she could take A.S. to a high

building so that A.S. could jump off the building; that E.B. overheard such comments; that the comments produced emotional distress for both A.S. and E.B.; and that such conduct constituted maltreatment by emotional abuse of A.S. and E.B..

Allegation 3: The Department found that Licensee yelled at A.S., E.B., and A.C., swore, made faces at A.S., and grabbed A.S.'s wrist breaking her watch and that such conduct produced emotional distress for and constituted maltreatment by emotional abuse of A.S., E.B., and A.C.

The Department did not label the maltreatment as "serious" because there was not sufficient evidence that the kick caused A.S.'s soft tissue injury of about the same time, any other injury requiring treatment by a physician, or any other "serious injury" as defined by Minn. Stat. § 245C.02, subd. 18. However, the Department did determine that the three incidents of maltreatment constituted "recurring maltreatment" and that Licensee was responsible for the recurring maltreatment.^[18]

24. By letter of October 23, 2003, the Department notified Licensee of the recurring maltreatment determination and the determination that she was responsible for recurring maltreatment which required that she be disqualified from any position allowing direct contact with persons served by several listed licensed and unlicensed programs. The letter also notified Licensee that the Commissioner had determined that Licensee posed a risk of harm to persons receiving services from the Department and Licensee must be immediately removed from her position allowing such direct contact. The letter outlined the process by which she could request reconsideration of the determinations.^[19] Licensee submitted a timely Request for Reconsideration.^[20]

25. Laura Plummer Zrust of the Department's Division of Licensing performed the Reconsideration. She reviewed all the information in the Department's file, including the Investigation Memorandum, and the Request for Reconsideration submitted by Licensee along with all of its attachments. She determined that the maltreatment and disqualification determinations should be upheld. She completed a Risk of Harm Assessment worksheet on January 16, 2004. She rated seven of the eleven listed factors as "high risk," and two as "medium risk." She ranked Licensee as "high risk" based upon the vulnerability of the victim and the other vulnerable adults in Licensee's care, the short length of time since the disqualifying event, Licensee's lack of training since the event, and Licensee's failure to accept responsibility for the event. Plummer Zrust concluded that Licensee posed an imminent risk of harm and recommended that the disqualification not be set aside.^[21]

26. On January 26, 2004, the Department issued a Notice of Reconsideration of Maltreatment Determination, Notice of Reconsideration of Disqualification and Order of Revocation (Notice and Order). It stated that the Commissioner had upheld the maltreatment and disqualification determinations. The Notice and Order also stated that the disqualification had not been set aside, that a variance had not been granted, and Licensee continued to be removed from direct contact services. The Notice and Order then notified Licensee that the Commissioner was revoking her license to provide Adult Foster Care for serious violations of Minn. Stat. § 245C.14, Subd. 1, and Minn. R. 9555.6125, Subp. 4 D, which, among other things, prohibit persons with disqualifications from direct contact with Adult Foster Care clients and other persons, and Minn. R. 9555.6195, which requires Adult Foster Care operators to ensure that residents are protected from abuse and neglect.^[22]

27. The Notice and Order informed Licensee of her right to appeal the maltreatment determination, the disqualification, and the revocation through a contested case hearing. Licensee submitted a timely appeal. On April 23, 2004, the Department served a Notice and Order for Telephone Prehearing Conference that initiated this matter.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Under Minn. Stat. § 626.5572, subd. 15, "maltreatment" means "abuse," "neglect," or "financial exploitation." Under Minn. Stat. § 626.5572, subd. 2(b), "abuse" means, among other things:

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:

(1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;

(2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening; . . .

4. Licensee's act of kicking A.S. while she was on the floor cleaning up a spill, observed by E.B., produced or reasonably could be expected to produce physical pain in A.S. and emotional distress for both A.S. and E.B. and constituted maltreatment in the form of abuse.

5. Licensee's acts of telling A.S. that she wished A.S. would jump out of a second story window of Licensee's home and that she could take A.S. to a high building so that A.S. could jump off the building, overheard by E.B., produced or reasonably could be expected to produce emotional distress for both A.S. and E.B. and constituted maltreatment in the form of abuse.

6. Licensee's acts of yelling at her residents, making faces at A.S. and grabbing A.S.'s wrist breaking her watch produced or reasonably could be expected to produce emotional distress for A.S., E.B., and A.C. and constituted maltreatment in the form of abuse.

7. Any individual who has engaged in serious or recurring maltreatment of a vulnerable adult must be disqualified from direct contact with or access to persons receiving services from Department-licensed programs and other similar programs.^[23] Licensee has engaged in recurring maltreatment of vulnerable adults and, therefore, must be disqualified.

8. The Commissioner may set aside a disqualification if the Commissioner finds that the individual does not pose a risk of harm to any person served by the facility.^[24] In determining that an individual does not pose a risk of harm, the commissioner shall consider the nature, severity, and consequences of the event or events leading to the disqualification, whether there is more than one disqualifying event, the age and vulnerability of the victim at the time of the event, the harm suffered by the victim, the similarity between the victim and persons served by the program, the time elapsed without a repeat of the same or similar event, documentation of successful completion by the individual of training and rehabilitation, and any other relevant information. In reviewing a disqualification, the Commissioner shall give "preeminent weight" to the safety of each person to be served by the facility.

9. Licensee poses a risk of harm to the vulnerable adults that she serves. The emotional abuse of her residents was done in the privacy of Licensee's home, that abuse was very threatening for the mentally fragile women subjected to it, and that abuse caused them great distress. There were several instances of that abuse, the victims were very vulnerable through their lack of capacity, A.S. was very distressed by Licensee's conduct, and all of Licensee's residents are similarly vulnerable. Therefore, the disqualification should not be set aside.

10. Minn. R. 9555.6125, subp. 4.D. states that adult foster care program operators "must not have a disqualification" under Minn. Stat. § 245A.04, subd. 3d. Licensee has been disqualified and therefore, revocation of his license is required under the rule. Minn. Stat. § 245A.07, subd. 1, requires that the Commissioner consider the nature, chronicity, or severity of the misconduct in arriving at the appropriate level of discipline. Considering of the nature, chronicity, or severity of Licensee's conduct that created the violations of these provisions, revocation of her license is fully justified.

11. The attached Memorandum is incorporated by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that the Commissioner **AFFIRM** the determination of recurring maltreatment, the determination of disqualification, the determination that the disqualification not be set aside and that a variance not be granted, and the revocation of Deborah Barry's license to provide adult foster care.

Dated: September 2, 2004

/s/ Steve M. Mihalchick, by A.W.K.
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped (Six tapes, not transcribed)

MEMORANDUM

Licensee objected to the prior statements of the vulnerable adults that had been taken by Investigator Antony-Thomas. The Administrative Law Judge has received the statements and based the findings regarding A.S. in large part upon the statements she gave to Antony-Thomas. There are several reasons for this:

First, Antony-Thomas captured an almost verbatim record of A.S.'s words. The tone of her statements, the language she used, and her verbal style as reported by Antony-Thomas were almost identical to her speech patterns during her testimony at the hearing.

Second, A.S. appears to have been truthful with the Investigator. She was definite on the important points, did not embellish, and demonstrated that she was fully capable of remembering and relating what had happened to her. She is able to understand when she is mistreated and knew Licensee was mean to her.

Third, A.S.'s statements to Antony-Thomas were consistent with statements she gave to Janowski, Schmidt, Herman, Dr. Gerber, and King.

Fourth, the events described by A.S. are consistent with the situation that other evidence shows existed at Licensee's home. The other residents reported that Licensee yelled at them and at A.S., made them clean and made them afraid to complain about her. Even Licensee says she did not get along with A.S. Licensee claims she yelled because A.S. did not use her hearing aides or because she was downstairs and the residents were up. But some of the yelling took place when Licensee was upstairs or at least once when A.S. was downstairs. A.S. reported that while cleaning A.S.'s room, Licensee pulled down all of A.S.'s pictures from a mirror. Licensee confirmed that, while explaining that she did so because the mirror was dirty and then put the pictures on a bulletin board. From Licensee's own statements and testimony, she was almost compulsively clean, was very assertive and controlling, and had grown weary of providing care for and cleaning up after the sometimes challenging clients.

Fifth, Licensee's denials of the maltreatment are not as credible as A.S. allegations and the statements of other witnesses.

Sixth, the statements would be admissible in a court under Minn. Stat. § 595.02, subd. 3.^[25]

Seventh, A.S.'s response of "No," when asked at the hearing if Licensee kicked her, was considered carefully and has been disregarded. A.S.'s words and body language on the stand, her "I don't know," her nods and other silent answers to questions, glances at Licensee, her facial expressions, all made it clear that she feared Licensee, felt that Licensee would harm her for speaking against her, and was extremely reluctant there in Licensee's presence to say anything negative about Licensee.

S.M.M.

^[1] Testimony of Licensee.

^[2] Testimony of Licensee.

^[3] Testimony of Licensee.

^[4] Testimony of Marilyn McCallum; Ex. 1 at 25.

^[5] Testimony of Licensee.

^[6] Ex. 14 at 171-178 and Ex. 18.

^[7] Testimony of Claudia Heide; Ex. 3 at 29-31.

^[8] Exs. 1 and 11; testimony of Licensee, Claudia Heide, Jennifer Herman.

^[9] Ex. 3.

^[10] Ex. 8.

^[11] Ex. 8: testimony of Jennifer Janowski.

^[12] Ex. 2 at 26.

^[13] Ex. 3 at 39.

^[14] Exs. 2 at 34-36, 8 at 100-101, 9 at 105.

^[15] Exs. 1 and 2; testimony of Lisa Antony-Thomas.

^[16] Exs. 1 and 2; testimony of Lisa Antony-Thomas.

^[17] Ex. 2 at 33.

^[18] Ex. 1.

^[19] Ex. 12.

^[20] Ex. 14.

^[21] Ex. 16; Testimony of Laura Plummer Zrust.

^[22] Ex. 13.

^[23] Minn. Stat. § 245C.14, subs. 1 and 2, and § 245C.15, subd. 4(b)(2) (2003)(formerly found in Minn. Stat. § 245A.04, subd. 3d(a)(4)). "Recurring maltreatment" means more than one incident of maltreatment. Minn. Stat. § 245C.02, subd. 16 (2003)(formerly found in Minn. Stat. § 245A.04, subd. 3d(a)(4)).

^[24] Minn. Stat. § 245C.22, subd. 4 (2003)(formerly Minn. Stat. § 245A.04, subd. 3b(b)).

^[25] Minn. Stat. § 595.02, subd. 3, provides:

Subd. 3. **Certain out-of-court statements admissible.** An out-of-court statement made by a child under the age of ten years or a person who is mentally impaired as defined in section 609.341, subdivision 6, alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

(a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(b) the child or person mentally impaired as defined in section 609.341, subdivision 6, either:

(i) testifies at the proceedings; or

(ii) is unavailable as a witness and there is corroborative evidence of the act; and

(c) the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.